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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/033,317
Filing Date: December 28, 2001
Appellant(s): BETZ ET AL.

Joel Fogelson
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 4/16/2005 appealing from the Office action mailed 11/16/2004.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings, which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

A substantially correct copy of appealed claims 1-7, 9-17 and 19 appears on pages 17-21 of the Appendix to the appellant's brief. The minor errors are as follows: claim 20 on page 21 recites limitation "the system according to Claim 10..." It is noted that claim 10 recites a method *not* a system.

(8) Evidence Relied Upon

5,585,838	**LAWLER et al.**	**12-1996**
5,619,249	**BILLOCK et al.**	**4-1997**
2002/0112005	**NAMIAS**	**8-2002**
5,828,419	**BRUETTE et al.**	**10-1998**
6,075,575	**SCHEIN et al.**	**06-2000**
6,563,515	**REYNOLDS et al.**	**05-2003**
5,812,123	**ROWE et al.**	**09-1998**

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 1, 10, 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schein (US 6,075,575 A) in view of Bruette et al. (US 5,828,419A).

Regarding **claims 1 and 10**, Schein teaches an interactive television/broadcast system and corresponding method comprising:

a display screen (as shown in figures 4A-B);

an EPG (102, 104 – see figures 4A-B) having at least one display window (126 – see figure 4A-B) and a grid guide, the grid guide including a plurality of titled cells (106, 108 – see

figures 4A-B) displayed on the display screen, wherein the EPG displays a video-clip preview in the least one display window (128 – see figures 4A-B) on demand by automatically launching the video clip preview (see col. 9, lines 38-41), after browsing and navigating through the grid guide to highlight a program titled cell (e.g., highlight a matrix 106), and after remaining at the highlighted program titled cell for a predetermined delay (for example, the EPG 102 displays a video clip preview in window 128 of the show that is currently being highlighted in show matrix 106. The video clip preview is displayed after its program title cell is highlighted and remaining the highlighted the program title cell for a short time – see figures 4A-B and col. 9, lines 38-44). Schein further shows the menu option comprising parental controls as shown in figures 6B-C. Schein does not explicitly teach launching of the video clip preview is inhibited if a program corresponding to the video clip preview and corresponding to the highlighted program titled cell is restricted according to a user profile based parental control. However, Bruette teaches restricting viewing of a program or channel with lock icon 50 in a cell of the program guide according to restriction criteria of parental control (see col. 4, lines 5-20 and 39-56 and col. 5, lines 14-16 and figure 3). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the program guide of Schein by restricting viewing of a program or channel with lock icon in a cell of the program guide according to restriction criteria of parental control as taught by Bruette in order to allow the viewer to readily and easily identify if the program or channel has been restricted from viewing.

Regarding **claims 19 and 20**, Schein teaches that the EPG (102, 104 - see in figure 4A-B) displays a video clip preview in window 128 of the show that is currently being highlighted in show matrix 106. Schein does not explicitly teach that the predetermined delay is at least one second. Official Notice is taken that it is well known in the art to remain highlighting the grid of the EPG at least one second. Therefore, it would have been obvious to one of ordinary skill in

the art at the time the invention was made to modify the system of Schein by remaining of highlighting the grid of the EPG at least one second to allow the television receiver presenting the content in response to the highlighting of the selected program.

3. Claims 2-5 and 11-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schein (US 6,075,575 A) in view of Burette et al. (US 5,828,419A) and further in view of Rowe et al. (US 5,812,123 A).

Considering **claims 2 and 11**, Schein discloses the at least one display window includes a first display window (126) for displaying a currently tuned program and a second display window (128) for displaying the video clip preview (figures 4A & 4B and col. 9, lines 38-44). However, Schein fails to specifically disclose an audio track of the video clip preview as recited in the claims. Rowe discloses an interactive television/broadcast system comprising an EPG display system (figures 2, 3, 4, 6, 7 or 8) having a video clip preview (92) and an audio track for the video clip preview that is heard by the subscriber (col. 14, lines 23-46). Rowe's system allows continuation of broadcast audio when the subscriber switches channels, informs/attracts the subscriber of promotional events in audio and promotes simple and convenient selection of desired programming (see col. 14, lines 23-36 and col. 4, lines 48-51). It would have been obvious to one of ordinary skill in the art to modify Schein's system to include an audio track of the video clip preview, as taught by Rowe, for the advantages of allowing continuation of broadcast audio when the subscriber switches channels, attracting the subscriber of promotional events in audio and promoting simple and convenient selection of desired programming.

As for **claims 3, 4, 12 and 13**, the combined teachings of Schein, Bruette and Rowe fail to specifically disclose a still image of the video clip preview prior to the display of the video clip preview and displaying a loading message or icon representative of an imminent video clip as

recited in the claims. Official Notice is taken that it is notoriously well known in the art to provide still images, loading messages or an icon representative of an imminent application, program or video on a display for the advantage of informing the viewer that a program is loading, executing or running and is about to occur. For example, impending information includes messages such as "Loading, please wait ...." or "Processing, please wait", the typical display of the hour glass icon when PC programs are loading and the display of static images. It would have been obvious to one of ordinary skill in the art to modify the combined teachings of Schein, Bruette and Rowe to include a still image of the video clip preview prior to the display of the video clip preview and/or displaying a loading message or icon representative of an imminent video clip for the typical advantage of informing the viewer that a program is loading, executing or running and is about to occur.

Claims 5 and 14 are met by the combined teachings of Schein, Bruette and Rowe, wherein Schein discloses navigation and selection within the preview window as disclosed throughout the entire reference including but not limited to col. 3, lines 3-8, col. 5, lines 56-65 and col. 9, lines 43-44.

4. Claims 6, 7, 9 and 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schein in view of Bruette and Rowe and further in view of Reynolds (6,563,515).

Considering claims **6 and 15**, the combined teachings of Schein, Bruette and Rowe disclose a remote control device including navigation buttons for navigating and browsing through the grid guide (see Schein at column 4, line 10 - column 6, line 11 and figure 1. See Rowe at column 9, lines 1-65). However, the combined teachings of Schein, Bruette and Rowe fail to specifically disclose a remote control device comprising a preview button for selecting to display the video clip preview as recited in the claims. Reynolds discloses an interactive television/broadcast system comprising an EPG having a first display window (77) (col. 8, lines

38-48) for displaying a currently tuned program, a second display window (80) (col. 9, lines 60-67) for displaying a video clip preview and a remote control device (50, figure 4) having a preview button (56) for selecting to display the video clip preview on the display screen (col. 7, lines 28-31 and col. 9, line 60 - col. 10, line 10). It would have been obvious to one of ordinary skill in the art to modify the combined teachings of Schein, Bruette and Rowe to include a remote control device comprising a preview button for selecting to display the video clip preview, as taught by Reynolds, for the advantage of facilitating the user with an easy way to make a selection of an item, option or a function on a display with the use of an input device.

Claims 7, 16 and 17 are met by the combined teachings of Schein, Bruette, Rowe and Reynolds, wherein Schein discloses a remote control having a record button (figure 1) for operating a VCR (82, figure 3) as disclosed at col. 4, line 47 - col. 5, line 5 and col. 14, lines 1-9.

Regarding **claim 9**, the combined teachings of Schein, Bruette and Rowe fail to disclose program titled cells having associated therewith a video clip preview distinguished in appearance from other program titled cells not having an associated video clip preview as recited in the claims. Reynolds discloses an interactive television/broadcast system comprising an EPG having a first display window (77) (col. 8, lines 38-48) for displaying a currently tuned program, and second display window (80) (col. 9, lines 60-67) for displaying a video clip preview, wherein program titled cells having an associated video clip preview has an icon (79). Note that the other program titled cells not having an associated video clip preview does not have an icon (79). See col. 10, lines 21-32. Reynold's system informs the viewer of the status (i.e. availability) of preview programs. It would have been obvious to one of ordinary skill in the art to modify the combined teachings of Schein, Bruette and Rowe to include program titled cells having associated therewith a video clip preview distinguished in appearance from other

program titled cells not having an associated video clip preview, as taught by Reynolds, for the advantage of informing the viewer of the availability of preview programs.

(10) Response to Argument

a. Claims 1 and 10

Regarding arguments from second paragraph on page 6 to first paragraph on page 8 of the appeal brief, appellants address the teachings of Schein et al. and Bruette et al. separately. Particularly, appellants argue that Schein et al. neither disclose nor suggest "launching of the video clip preview is inhibited if a program corresponding to the video clip preview and corresponding to the highlighted program titled cell is restricted according to a user based parental control", while teachings of Bruette et al. are not concerned with displaying current program data and video preview data along with the electronic program guide.

In response to appellants' arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.,* 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

It is important to note that claims 1 and 10 are rejected over Schein et al. in view of Bruette et al. Particularly, Schein et al. teach a preview window area 128 in program guide 102 for displaying a preview of a program corresponding to a titled cell currently being highlighted in show matrix 106 (see figures 4A-4B; col. 9, lines 38-44). Schein et al. further show a menu option comprising parental control as illustrated in figures 6B-6C. That is, Schein et al. suggest parental control feature, for example, preventing children from watching certain programs or video contents. The Bruette et al. reference teaches restricting a program event or channel with lock icon 50 in a cell of a program guide according to restriction criteria of parental control entered by a viewer, i.e., parent (see abstract; col. 4, lines 5-20 and 39-56; col. 5, lines 14-16

and 33-35 and figure 3). Since a program event is restricted, then all information associated with the program is also restricted.

At page 7, second paragraph of the appeal brief, appellants argue that "the preview video data" of the present claimed invention is different from "the video data" in the Bruette et al. reference by stating "the preview video data of present invention contains a unique data composition over the video program data of a selected channel". It is noted that the features upon which appellants rely (the underlined terms) are not recited in the rejected claim(s).

At page 8, first paragraph of the appeal brief, appellants further argue "it would not have been obvious to restrict preview video data relating to the highlighted program block in view of the lock icon which denotes the restriction of a selected program data as disclosed by Bruette et al." This argument is not persuasive based on the following reasons:

Bruette et al. disclose restricting data for certain programs based on parental control. The Bruette et al. reference does not disclose every permutation of a program or various types of programs that are being restricted. However, Bruette et al. disclose deleting program entry or channel (and all information regarding the program) from the program guide (see col. 1, lines 26-29). The examiner posits that removing the channel or program from the program guide restricts all other program related data including the preview data. It is reasonable to assume that all data for this channel or program is inhibited. Moreover, allowing or displaying a preview for a program that has been inhibited or locked is repugnant (to the meaning of "inhibiting" or "locking"). Bruette et al. further disclose that "program event" is restricted for viewing (col. 5, lines 33-35). One skilled in the art would readily recognize that "program event" suggests that the program or any information related to the program is restricted. Additionally, it is expected (if not necessary) for any parental control system that restricts a triple X rated adult program to

also restrict any preview or substantial information that reveals the content or nature of the adult program.

In response to appellants' argument at page 8, second paragraph of the appeal brief, that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the motivation of allowing the viewer to easily and readily identify if a given program or channel has been restricted from viewing is found in the Bruette et al. reference at column 1, lines 48-50 and column 2, lines 1-3. It would have been obvious (or necessary) for any parental control system that restricts a triple X rated adult program to also restrict any preview or substantial information that reveals the content or nature of the adult program.

In response to appellants' argument ***(at page 9, line 3 to page 10, first paragraph of the appeal brief that the combination of Schein et al. and Bruette et al. systems "would result in an electronic program guide simultaneously displaying a grid guide with a lock icon alongside restricted programs, a current program window displaying currently viewed video data and a preview window displaying preview data associated with a highlighted program block")*** the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

Appellants further argue "Schein et al. and Bruette et al. when taken alone or in combination neither disclose nor suggest that 'the video clip preview is inhibited if a program corresponding to the video clip preview and corresponding to the highlighted program tilted cell is restricted according to a user based on parental control' as claimed in the present invention" (see last five lines of the first paragraph on page 10 of the appeal brief).

In response, appellants should note that Bruette et al. disclose restricting data for certain programs based on parental control. The Bruette et al. reference does not disclose every permutation of a program or various types of programs that are being restricted. However, Bruette et al. disclose deleting program entry or channel (and all information regarding the program) from the program guide (see col. 1, lines 26-29). The examiner posits that removing the channel or program from the program guide restricts all other program related data including the preview data. It is reasonable to assume that all data for this channel or program is inhibited. Moreover, allowing a preview for a program that has been inhibited or locked is repugnant (to the meaning of "inhibiting" or "locking"). Bruette et al. further disclose that "program event" is restricted for viewing (col. 5, lines 33-35). One skilled in the art would readily recognize that "program event" suggests that the program or any information related to the program is restricted. For example, it is expected (if not necessary) for any parental control system that restricts a triple X rated adult program to also restrict any preview or substantial information that reveals the content or nature of the adult program.

Thus, claims 1 and 10 are not patentable for the above reasons.

b. Claims 19 and 20

All responses presented above regarding claims 1 and 10 are applicable to claims 19 and 20 and are incorporated herein. Further, Schein et al. teach displaying a video clip preview in preview window 128 corresponding to its program titled cell is currently being highlighted in

show matrix 106 in program guide 102 (see col. 9, lines 42-43 and figures 4A-4B). That is, the preview is displayed in the window 128 after remaining at the highlighted program titled cell. Neither Schein et al. nor Bruette et al. teach remaining at the highlighted program titled cell for at least a second.

However, appellants state that the Schein et al. and Bruette et al. references "could not disclose nor suggest a predetermined delay of 1 second for display or inhibiting display of the video clip preview" (see page 11, lines 6-8 of the appeal brief). It is noted that the features upon which appellants rely (the underlined terms) are not recited in the claims.

In addition, the Lawler et al. reference is herein cited to support the feature of remaining the highlighted grid of the program guide at least one second as addressed in the Official Notice taken. Specifically, Lawler et al. teach that program titles in program guide for currently available programs are highlighted to indicate their current availability to the user. The additional information of a selected program title is updated or displayed in response to a user's command. However, the highlighting indicating currently available programs will shift, as appropriate so that programs which are no longer available become shaded and programs that become available are highlighted (see col. 10, lines 23-26; col. 13, lines 16-31; col. 15, lines 4-13 and figures 3 and 8). On the other hand, Lawler et al. teach that highlighting the program titles in the program guide are remained for a predetermined time (which must be inclusive of at least one second) until their programs are no longer available. Furthermore, video and any information displayed on a television screen are normally displayed at a minimum of 30 frames per second for the viewer to properly see the displayed video or information. Since the 30 frames per second criteria must be obeyed in television standard, Lawler's "predetermined time" must be at least one second or more.

Thus, claims 19 and 20 are not patentable for at least the same reasons as discussed regarding claims 1 and 10 above.

c. Claims 2-5 and 11-14

In response to appellants' arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Moreover, all responses presented above regarding claims 1 and 10 are also applicable to claims 2-5 and 11-14 and are incorporated herein.

In addition, the Billock et al. reference and the Namias reference are herein cited to support the taken Official Notice with respect to claims 3, 4, 12 and 13. Particularly, Billock et al. teach presenting a still image from a video program to a viewer as an aid to selecting a program of interest. The viewer may view a full-motion preview of the program by activating a preview mode (see col. 7, lines 30-36; col. 10, line 62-67; col. 11, lines 18-20 and 32-42 and figures 6-7). Namias shows a processing wait screen 450 on screen indicating a loading message for processing video data (see figure 4B and page 3, paragraph 0038).

Thus, claims 2-5 and 11-14 are not patentable for at least the same reasons as discussed regarding claims 1 and 10 above.

d. Claims 6, 7, 9 and 15

In response to appellants' arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Moreover, all responses

presented above regarding claims 1 and 10 are also applicable to claims 6, 7, 9 and 15 and are incorporated herein.

Thus, claims 6, 7, 9 and 15 are not patentable for at least the same reasons as discussed regarding claims 1 and 10 above.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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